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IMPLEMENTATION OF THE DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF

Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1995/23

Addendum

Visit by the Special Rapporteur to Pakistan

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Introduction

1. From 12 to 22 June 1995, the Special Rapporteur on the question of religious intolerance made a visit to Pakistan under his terms of reference at the invitation of the Government of the Islamic Republic of Pakistan.

2. In the course of his visit, the Special Rapporteur went to Islamabad (12-14 June and 22 June), Lahore (15-18 June) and Karachi (19-21 June) in order to meet official representatives of the federal authorities (Foreign Affairs, Religious Affairs, Minorities, Interior and Justice Ministries) and provincial authorities (in particular the Ministry of the Interior of Punjab in Lahore). He also interviewed members of the Council for Islamic Ideology, the Supreme Court, religious and political leaders of religious minorities, independent personalities and representatives of non-governmental organizations, including the Commission on Human Rights of Pakistan, the Human Rights Society of Pakistan and Women's Action Forum.

3. The Special Rapporteur would like to thank the Pakistani authorities for this very first visit to Pakistan by a Special Rapporteur of the Commission on Human Rights. He is also extremely grateful to the various personalities he met when preparing and making the visit, as well as to the representatives of UNDP and UNICEF for their cooperation.

4. During his visit, the Special Rapporteur concentrated particularly on studying legislation in the field of tolerance and non-discrimination based on religion or belief, its implementation and current policies, and on identifying factors conducive to the elimination or maintenance of all forms of intolerance and discrimination based on religion or belief.

5. Pakistan, which has an area of 803,943 km^2 and which became an independent State in August 1947, is made up of four provinces: Punjab, Sind, North West Frontier Province and Baluchistan. It has an estimated population of 131,430,000 inhabitants, of whom 97 per cent are Muslims, and a high rate of illiteracy (63.6 per cent). 1/ Islam is recognized as the religion and foundation of the State.

I. LEGISLATION IN THE FIELD OF TOLERANCE AND NON-DISCRIMINATION BASED ON RELIGION OR BELIEF

A. Summary of legislation

1. Constitutional provisions

6. Article 20 of the Constitution (1973) proclaims every citizen's right to profess his own religion, subject only to such limitations as are prescribed by law or are necessary to protect public order and morality. Article 21 defends the principle of non-discrimination with regard to the payment of special religious taxes, while article 22 supports amongst others the principle of non-discrimination in educational institutions.

7. The other relevant articles of the Constitution are as follows:

Article 26

"In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth."

Article 27

"No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth."

Article 28

"Subject to article 251, any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and, subject to law, establish institutions for that purpose."

Article 36

"The State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services."

8. Article 2 of the Constitution states that: "Islam shall be the State religion of Pakistan", while article 41.2 specifies that: "A person shall not be qualified for election as President (of Pakistan) unless he is a Muslim." Articles 51, 2A and 106.3 (see 1985 amendments) establish separate lists of voters for elections to National Assembly seats reserved for minorities: 10 seats in the Chamber (217 seats) and 23 seats in the 4 provincial assemblies (483 seats).

9. In 1974, a Constitutional amendment declared the Ahmadis 2/ a non-Muslim minority.

2. Other legal provisions

(a) Penal Code, ordinances and religious offences

10. Sections 295 and 298 of the Pakistan Penal Code (1861), inherited from the British, are aimed at preventing and limiting religious violence by punishing religious offences against religious groups.

11. Significant changes were introduced as a result of the policy pursued by President Zia-ul-Haq (1977-1988). As early as 1974, five ordinances containing penalties derived from Islam (Hudood) were introduced punishing

offences related to property, alcohol, gambling, adultery (Zina) and false accusations (Qazaf), subject to Islamic forms of punishment, including whipping and amputation.

12. In 1980, section 298 A was inserted in the Penal Code, by which derogatory remarks "by words, ... or by imputation, innuendo or insinuation directly or indirectly" in respect of persons revered in Islam, was made a criminal offence punishable with up to three years' imprisonment. In 1982, section 295-B was added, making defiling the Koran a criminal offence.

13. Following on the 1974 constitutional amendment, in 1984, Ordinance XX added sections 298 B and 298 C to the Penal Code, expressly referring to the Ahmadis and forbidding them to profess to be Muslims and to use Muslim practices in their worship or in the propagation of their faith, any offence being punishable with up to three years' imprisonment and a fine.

(b) Blasphemy law

14. In 1986, the "Criminal Law Amendment Act" amended the Penal Code and inserted the blasphemy law in section 295 C. Under this amendment, any person guilty of direct or indirect blasphemy against the name of the prophet Mohammed is liable to life imprisonment, or even to the death penalty, and to a fine (blasphemy law).

15. Under Prime Minister Nawaz Sharif (1990-1993), section 295 C of the Penal Code concerning blasphemy against the name of the prophet Mohammed was amended on 29 July 1991 as a result of the entry into force of the 1991 Shariat Act (Islamic law). 3/ In the spring of 1991, the Supreme Court, following the precepts of the Shariat, issued an order, subsequently confirmed by the Senate, declaring any person found guilty of blasphemy, under section 295 C of the Penal Code, liable henceforth to the death penalty, without any possible form of appeal.

16. In 1991, Ordinance XXI, promulgated on 7 July, amended section 295 A of the Penal Code and the Code of Penal Procedure by raising from 2 to 10 years the maximum prison sentence for outraging the religious feelings of any group. Lastly in 1992, section 123 A of the Penal Code was amended to declare any act prejudicial to the ideology of Pakistan as a criminal offence.

B. Special Rapporteur's concerns regarding certain forms of discrimination and differentiation

1. Constitutional provisions

(a) Situation of religious minorities

(i) Special provisions

17. There is no provision in the Constitution preventing non-Muslims from holding government posts, except the office of President, who must be a Muslim. According to article 42 of the Constitution, the President has to

make the following oath "I, ..., do solemnly swear that I am a Muslim and believe in the Unity and Oneness of Almighty Allah, the Books of Allah, the Holy Quran being the last of them, the Prophethood of Muhammad (peace be upon him) as the last of the Prophets and that there can be no Prophet after him, the Day of Judgement, and all the requirements and teachings of the Holy Quran and Sunnah ... that I will strive to preserve the Islamic Ideology which is the basis for the creation of Pakistan ...". Under article 49 (4), the Prime Minister has to make the same oath.

18. The Deputy Speaker of the National Assembly or the Deputy Chairman must state in his oath: "... that I will strive to preserve the Islamic Ideology, which is the basis for the creation of Pakistan ...".

(ii) Electoral system

19. Under the Constitution, elections to the National Assembly, provincial assemblies and local authorities are conducted with separate electoral rolls for Muslims and non-Muslims. Muslims are authorized to vote only for Muslim candidates, and non-Muslims may only vote for non-Muslims. A small number of seats are reserved for non-Muslims (see arts. 51, 2A and 106.3 of the Constitution).

20. According to the authorities, this split electoral system guarantees political representation for minorities despite their small number. According to non-governmental sources, the system affects the political rights of non-Muslim communities and bases citizenship on religion, going against the notion of citizenship free of any distinction whatever, including religion.

(b) The case of the Ahmadis

21. The Ahmadis, who were declared a non-Muslim minority in 1974 and were affected by the legislation established with Ordinance XX of 1984, appealed to the courts against the way they were being treated. On 3 July 1993, the Supreme Court issued a judgement in which it interpreted the reference to the law in article 20 of the Constitution on religious freedom as a reference to Islamic law. It also found that any claim by Ahmadis to be Muslims constituted a provocation against Muslims, which made it difficult to ensure their protection.

2. Other legal provisions

(a) Mention of religion on identity cards and passports

(i) Identity cards

22. With regard to the previous Government's plan to introduce the mention of a holder's religion on identity cards, the Special Rapporteur was informed that the idea had been shelved in November 1992 following very strong opposition by the minorities, including the Christians. Some concern was expressed that the plan might be revived in the future. Nevertheless, as

things stand at present, application forms for identity cards do include a reference to religion. According to information received, the same type of problem arises with application formalities to university.

(ii) Passports

23. All passports include a reference to the religion of the holder. According to the authorities, this formality is due in part to the pilgrimage to Mecca in Saudi Arabia giving rise to a need to identify applications by unauthorized Ahmadis, who are considered non-Muslims.

24. The passport application form also asks holders to identify their religion, while Muslims must state that they do not recognize Ahmadis or Mirza Ghulam Ahmad as Muslim.

(b) Law on blasphemy and jurisprudence

25. The authorities have stated their intention to amend the blasphemy law (sect. 295 C), with a view to avoiding any abuse.

26. It has been proposed in particular that section 295 C should be amended so that cases are no longer registered by ordinary police officers, and instead under orders of a court, and that any unjustified use of complaints for blasphemy should incur a penalty of 10 years' imprisonment.

27. The Lahore High Court, in a decision of 14 April 1994, reportedly laid down the principle whereby blasphemy against any prophet of God would be tantamount to blasphemy against the prophet Mohammed.

(c) Evidence

28. The Special Rapporteur's attention was called to certain provisions regarding evidence which were not in conformity with the principles of religious equality and non-discrimination. Under Hudood Ordinances (for the offences of drinking, adultery, Qazaf, gambling and theft), a non-Muslim's evidence would not be admissible in cases liable to Hadd (Islamic punishment) and would carry less weight than of a Muslim in cases liable to "secular punishments". Indeed, in these latter cases, the law of evidence does not accept a non-Muslim as a full witness (there have to be two non-Muslim witnesses where one Muslim is sufficient).

29. In 1979, the law of evidence was also reportedly changed to reduce a woman's evidence to the equivalent of half a man's in some cases, such as adultery.

(d) Mixed marriages

30. The Special Rapporteur's attention was called to unequal treatment with regard to marriage. Christian marriage laws are reported to authorize mixed marriages, while the Muslim Personal Law recognizes this right only for Muslim men marrying non-Muslims, but not for Muslim women.

(e) Conversion, proselytism

31. According to the Pakistani authorities, conversion and proselytism are not prosecuted. Other sources of information, however, have indicated that the subordinate judiciary tends to hold that conversion from Islam to another faith is an offence.

32. The Special Rapporteur was also informed that, under the Dissolution of Marriage Act, conversion is not a ground for annulment of marriage, but if a non-Muslim woman married to a non-Muslim embraces Islam, her marriage is deemed to be annulled.

II. IMPLEMENTATION OF LEGISLATION AND POLICY IN THE FIELD OF TOLERANCE AND NON-DISCRIMINATION BASED ON RELIGION OR BELIEF

A. Summary of information

33. According to the Pakistani authorities, the State's policy is to safeguard the rights, liberties and welfare of minorities on the basis of respect, full protection, equal treatment and development within the framework of an Islamic State where a majority of the population is Muslim.

34. Besides a federal department responsible for minorities, whose terms of reference include safeguarding the rights and welfare of minorities, the Government has recently set up a National Commission for Minorities chaired by the Minister for Minorities Affairs and consisting of representatives of the minorities. The Commission's tasks include examining all legislation, regulations and practices said to be discriminatory against minorities, recommending to the Government measures aimed at ensuring greater participation by minorities in national affairs, considering complaints by members of minorities with a view to making recommendations to the Government, and safeguarding places of worship and other religious sites belonging to minorities.

35. A Federal Advisory Council for Minorities Affairs, made up of representatives of the minorities, is also responsible for making recommendations to the Government regarding minorities.

36. District Minorities Committees have also been set up with members of the minorities in each district under the responsibility of Deputy Commissioners/Additional Deputy Commissioners. The task of these committees is to find solutions to the daily local problems of minorities.

37. The authorities have also mentioned measures taken to ensure the welfare of minorities in the field of religion and in other respects (see sect. I.B above, under Special Rapporteur's concerns). Special attention was given to the Government's policy towards the Ahmadis in particular and all Pakistani citizens in general, with special emphasis on the blasphemy law.

38. According to non-governmental sources, religious minorities, and in particular the Ahmadis, Christians and Hindus, are exposed to religious intolerance, mainly as a result of current legislation and the religious extremism of a minority of fanatic Muslims, and even to a form of sectarianism in society increasingly influenced by a spirit of intolerance.

B. Situation of religious minorities

39. The Special Rapporteur discussed the situation of Ahmadi, Baha'i, Buddhist, Christian, Hindu, Parsee and Sikh religious minorities with several people. He was unable to obtain any recent statistical data regarding the size of these minorities. The largest religious minorities, however, in decreasing order, are the Christians, Hindus and Ahmadis. Concerning the latter, it is difficult to obtain any very representative data, in so far as, for census purposes, the Ahmadis in accordance with their belief declare themselves to be Muslims.

40. More detailed consultations were held concerning the Ahmadis, Christians, Hindus and Zikris, since both official and non-governmental sources agreed that the situation as regards Baha'i and Parsee minorities, which were the smallest, was relatively problem-free.

1. Religion

(a) Religious activities

41. According to many non-governmental sources, the religious activities of the Ahmadi community are seriously restricted, especially as a result of the 1974 constitutional amendment declaring them to be a non-Muslim minority, Ordinance XX of 1984 and the blasphemy law. Many Ahmadis are reported to be prosecuted under section 298 C of the Penal Code for the following offences: saying daily prayers, referring to "Kalima Tayyaba", calling to prayer (Azan), preaching, using Muslim epithets and verses of the Koran and "professing to be Muslim". It is also reported that Ahmadis have been accused of claiming to be Muslim under the terms of section 295 C, which provides the death penalty. The claim to being Muslims is reportedly considered to be constituted by the above-mentioned religious activities. In addition, it has been reported that Ahmadis are not authorized to bury their dead in Muslim cemeteries.

42. The authorities have provided the following explanations.

> "The Ahmdiyya issue has a century-old history. The problems arose when a group of persons led by Mirza Ghulam Ahmed denied the finality of the Prophet Muhammad (Peace Be Upon Him), which, after the unity of God, is a fundamental tenet of Islam.
>
> "The matter was deliberated upon in the legislature and the consensus of the nation was arrived at in the shape of an amendment to the Constitution through a unanimous vote of the National Assembly in 1974. This amendment had two objects: (a) to safeguard the religious

sentiments of Muslims (the overwhelming majority of the population); and (b) to protect the Ahmadiyya from any adverse reaction arising from what had been historically regarded as a repudiation of a fundamental belief of the Muslims.

"The Admadis as a non-Muslim minority have been accorded all the rights and privileges guaranteed to minorities under the Constitution and laws of Pakistan. Some religious practices of the Ahmadis are similar to those of Muslims, which poses a threat to public order and safety. Consequently, these religious practices have to be regularized through reasonable legislative and administrative restraints so as to maintain sectarian peace. The restrictions mentioned in Ordinance XX are in accordance with the spirit and provisions of international human rights guaranteed under Pakistan's Constitution and laws. The restraints contained in Ordinance XX apply only to the public exercise of public practices.

"The exercise of a right is never absolute, as is stipulated in article 18, paragraph 3 of the International Covenant on Civil and Political Rights and article 1, paragraph 3 of the Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief, as well as article 20 of the Constitution of Pakistan.

43. The authorities made it clear that while Ahmadis were not authorized to propagate and practice their religion as Muslims, all their religious activities as non-Muslims were authorized. With regard to cases of prosecution against the Ahmadis, the official sources explained that they arose from the propagation of religious views by Ahmadis claiming to be Muslims; the religious activities of the Ahmadis might be interfered with, on the other hand, for reasons which were not religious but purely personal, arising from infringements of the law, especially the law on blasphemy.

44. Most of the non-governmental commentators pointed out that it was not up to the State to define the content of a religion and its form of expression, and they strongly criticized the current laws affecting the Ahmadi minority, as well as the policy of defining the content of the Ahmadi faith, as expressed in several passages of a memorandum on the Ahmadi question dated 16 January 1994, addressed by the Ministry for Foreign Affairs to a number of diplomatic representatives.

45. With regard to Christians and Hindus, interference with their religious activities is also alleged to be due to abusive application of the blasphemy law. Christians are also reported to be faced with administrative difficulties (such as visa formalities) on the occasion of the visits of Christian clergy and personalities from abroad.

46. As in the case of the Ahmadis, there is said to be a campaign to have the Zikris declared non-Muslim (see E/CN.4/1995/91).

47. With regard to the religious activities of minorities, the Pakistani authorities have announced the following measures.

(i) Time off for Christian employees

48. As a result of the switch-over of the weekly holiday from Sunday to Friday in government and semi-government offices and corporations in 1977, Christian employees are granted time off on Sunday after 11 a.m. with a view to enabling them to offer their prayers.

(ii) Optional holiday

49. Employees belonging to minority communities are granted optional holidays liberally, to enable them to celebrate their religious holidays.

(b) Places of worship

50. The Special Rapporteur was unable to obtain statistics concerning the number of places of worship and their geographical distribution. The authorities, however, said that the following measures had been introduced in favour of the places of worship of religious minorities:

> "A Special Fund for the Welfare and Uplift of Minorities is allocated to the minority representatives on the basis of the population of the minority community which they represent, for inter alia the following purposes: acquisition/improvement of burial places and repair/renovation of places of religious importance, development schemes (exclusively for minorities) such as improvement of graveyards, repair and renovation of places of worship.
>
> "The Evacuee Trust Property Board spends a sizeable amount on the repair/maintenance of places of worship of Hindus and Sikhs. Rs. 1.8 million have been spent for this purpose during the year 1993-94 and Rs. 4.7 million during 1994-95".

51. According to non-official sources, the Ahmadi, Christian, Hindu and Zikri minorities have suffered attacks against their places of worship initiated by Muslim extremists. Such incidents are said to be often related to specific events occurring on the international scene. After the profanation and destruction of the Babri mosque in India in December 1991, for instance, over 120 Hindu temples in Pakistan were reportedly sacked by the crowd.

52. It is reported that Christians have also incurred acts of vandalism and destruction against their places of worship, as well as attempted extortion of church properties (including cemeteries) by Muslim religious leaders. In addition, it is said that permits to build places of worship are often refused, obliging the Christian minority to request authorization for community centres (implicitly incorporating a place of worship). The access to places of worship is also reported to be obstructed by Muslim extremists, a situation which would apply specifically to the Ahmadis.

53. With regard to the attacks on Hindu temples following the destruction of the Babri mosque, the authorities have stated that steps had been taken to provide compensation and to rebuild the temples.

(c) Operation of justice

54. The Special Rapporteur noted that the serenity of judicial procedures was impaired due to demonstrations and crowd movements organized outside courtrooms.

2. Other fields

(a) Employment

55. According to non-official sources, minorities suffer de facto discrimination as regards access to employment. In government service, minorities are reported to be under-represented at all levels and especially in the senior ranks, with few exceptions. Any positions held are said to be rendered very insecure, especially in the case of Ahmadis who had not made a prior declaration of their religious belief. In addition, promotions are said to be hindered, despite applicants possessing the necessary qualifications.

56. According to the authorities, senior government posts in a number of departments are held by members of minorities.

(b) Politics

57. Independent sources consider the system of separate elections to be iniquitous, since it does not allow non-Muslim minorities to vote for Muslims or vice versa. In the views of most non-Muslims, the system is seen as creating a category of second-class non-Muslim citizens, with the effect of preventing their full integration in social life and their development.

58. The authorities have indicated that they do not intend to change the present electoral system, which ensures that all minorities are represented, even if numerically small.

(c) Education

59. According to non-governmental sources, minorities are discriminated against in the school system, especially in rural areas. In particular, school textbooks and syllabuses are said to exclude an eclectic view of religions (for instance by omitting any reference to minority leaders who have made a historical contribution to Pakistan), for the benefit of the State religion.

60. The Special Rapporteur was informed by the authorities of measures taken to assist minorities in the field of education, such as the Special Fund for the Welfare and Uplift of Minorities (see para. 50 above) and the Minorities Welfare Fund, which offer study grants to students from minorities. The authorities have also sent a letter replying to the questionnaire sent by the Special Rapporteur to Governments concerning freedom of religion and belief in primary and secondary schools.

(d) Culture

61. With the aim of preserving and promoting minority cultures, the authorities have set up a scheme of National Cultural Awards exclusively for the benefit of minorities.

(e) Media

62. According to official sources, the Pakistan Broadcasting Corporation broadcasts programmes on special occasions and religious festivals of minorities. Similarly, the Pakistan Television Corporation televises special programmes on religious festivals of minorities. There is no discrimination against artists belonging to minority communities on radio or television.

63. According to non-governmental sources, some newspapers encourage religious intolerance against religious minorities, through sensational reporting. Ahmadi journalists have also been prosecuted on blasphemy charges (see E/CN.4/1995/91).

64. According to non-governmental sources, minority budgets are stagnating, compared with other public budgets.

3. Personal protection

(a) Arrests, detentions and prosecutions

65. A list of cases concerning members of Christian and Ahmadi minorities has been transmitted to the authorities (see annex). These are cases of what are interpreted as religious offences under Pakistani law, including the law on blasphemy. The Special Rapporteur has so far received no written reply from the authorities. He has found, moreover, that in many cases the administration of justice is hindered, especially through pressure brought to bear by crowd demonstrations organized by religious extremists.

(b) Attacks on the physical and moral integrity of individuals

66. According to non-governmental sources, Christian and Hindu girls and women are the victims of rape (especially those working as servants or nurses) and kidnapping to convert them by force to the Muslim religion. According to reports, the police does not proceed with the necessary investigations leading to the arrest of the perpetrators, while in some cases police officials are reported to be personally involved in rape cases. Members of minorities are also reported to be frequently exposed to aggressions, threats or even murder (see annex) by religious extremists. In many cases, the police reportedly failed to take the necessary security measures or to undertake investigations against or prosecute those responsible.

67. The authorities have said that such attacks also affect Muslims and have no religious motivation. Regarding the police, it was admitted that in some cases officials had made mistakes, but that such cases were unusual and in any event did not reflect discrimination against minorities. It was also stated

that preventive measures had been instituted to ensure the protection of minorities (see under Official measures adopted in paras. 73-77) and that the police fulfilled its task of protecting the public and identifying offenders. With regard to assassination threats against Asma Jehangir, Tariq C. Qaisar, Father Julius and J. Salik (see annex), the Ministry of the Interior reported the arrest of 200 persons and religious extremists.

III. IDENTIFICATION OF FACTORS AFFECTING THE ELIMINATION OR MAINTENANCE OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF

A. Factors conducive to the maintenance of all forms of intolerance and discrimination based on religion or belief

1. Legislation

68. It appears from all interviews with non-governmental groups that Pakistani legislation, especially that inherited from the period of office of President Zia-ul-Haq, constitutes a factor of intolerance and discrimination, to which society in general and religious minorities in particular are exposed. Particular features mentioned include the system of separate elections, the exclusion of Ahmadis from the Muslim religion and all legislation opposed to activities deemed to be hostile to Islam, especially the blasphemy law. The Pakistani legal system concerned either directly or indirectly with religious affairs reportedly jeopardizes the notion of citizenship, the content and scope of which are said to be subjected to real or presumed religious considerations. It has often been found, moreover, that State interference in terms of defining the content and mode of expression of a religion (as in the case of the Ahmadis) constituted a source of discrimination and intolerance, which had the effect in practice of subjecting freedom of belief and conviction to a system of supervision and control. As a result, there is a danger that society may be divided into differentiated and even hierarchical categories of citizens, according to religious criteria, the effects of which in practice might depend on power relationships and circumstantial considerations. For this reason, some non-governmental representatives do not hesitate to refer unambiguously and insistently to the notion of apartheid. The very clear feeling to emerge as a result is that the condition of religious minorities is experienced by many as a second class citizenship, where rights lag far behind obligations.

69. Furthermore, still according to non-governmental sources, Islamic law is in fact applied to non-Muslims through some special institutions, such as the Islamic Ideology Council, which is the constitutional agency charged with bringing existing laws into conformity with Islamic injunctions and for advising the Government/legislative regarding any legislative proposal, and the Federal Shariat Court, which has the authority to annul any law on the ground of repugnancy to Islam and whose verdict takes effect if the legislative fails to amend the impugned law within the time-limit prescribed by the court. Yet reportedly non-Muslim lawyers are not authorized to appear before the Federal Shariat Court (see under Constitutional provisions).

70. Lastly, the present legislation, which is mainly inherited from the past, has tended and, it would appear, still tends to foster a culture of intolerance in society and does not appear to fulfil the purpose of integrating all components of Pakistani society.

2. Society

71. As a result of the combination of several factors, including current legislation and an environment influenced by special social structures, Pakistani society often appears conservative, little open to change and imbued with intolerance. These factors, combined with others, such as the lack of a civil society admitting countervailing forces, the behaviour of an elite often bent on preserving its own interests, a political system still in the process of democratization, a very low rate of literacy and a harsh economic and social environment, tend to make society more vulnerable to intolerance and expose it to the sort of religious extremism maintained by minority groups.

3. Extremism

72. In Pakistan, religious extremism is one of the main driving forces of religious intolerance, not only towards religious minorities, but also towards Muslims as well. This extremism is derived essentially from the use of religion for the political purpose of establishing the authority of religious/political parties. Such parties are clearly in a minority, as shown by their poor results in the recent legislative elections. Nevertheless, partly thanks to the Madrassadini (religious schools), and partly owing to the frequent use of mosques to spread political propaganda, religious extremists through their activism aim to dominate society, subjecting it to a climate of intolerance and sometimes insecurity, as appears from the serious violations of human rights (aggressions, threats, assassinations, etc.). This would explain the opposition facing government attempts to introduce a spirit of greater tolerance, especially by amending blasphemy proceedings or improving conditions in the Madrassadini and mosques.

B. Factors conducive to the elimination of all forms of intolerance and of discrimination based on religion or belief

1. Official measures adopted

73. Apart from setting up a department in charge of minorities, a National Minorities Commission, a Federal Advisory Council for Minorities Affairs and District Minorities Committees, the Government has introduced a federal unit in charge of monitoring human rights violations. Cases of violence against minorities are reported to be under strict supervision and to be followed up by inquiries.

74. With regard to mosques, the Government has been trying for almost a year to restrict the use of loudspeakers to the faithful attending the mosques, subject to the confiscation of equipment in the event of abuse. The effect of this measure has reportedly been to limit the coverage of loudspeakers in some neighbourhoods or villages. A system is also said to have been

introduced to inculcate tolerance through preaching. In addition, the Government has forbidden the carriage of weapons at religious demonstrations.

75. Regarding religious schools, the Special Rapporteur has been informed that the authorities have been trying to make their financial support conditional on a say in teaching programmes, in order to offset political militancy. As pointed out by the authorities, Koranic schools, which have grown exponentially compared with public sector schools, have long been in receipt of finance from abroad, especially from Saudi Arabia.

76. With regard to publications, the authorities have introduced controls banning over 1,500 publications considered to create intolerance by inciting their readers to murder and persecutions. Publishers are threatened with arrest if they commit the above offences or adopt attitudes leading to such offences.

77. In the area of interfaith dialogue, a code of conduct has been drafted in conjunction with the leaders of the different religious communities with a view to preventing any intolerance.

2. Required measures

78. From the point of view of non-governmental sources, there is a need to change or even to abrogate some existing laws or parts of them (e.g. the laws on blasphemy, separate elections, the declaration of Ahmadis as a non-Muslim minority, the reference to religion on passports, the mention of religion in identity card application forms, or the laws on evidence), with a view to introducing new legislation which would be fairer to all components of society.

79. In this respect, some sources advocated a separation between State and religion, particularly as a source of law, in order to avoid any State interference in determining the content and mode of expression of religions and in order to establish clearly a citizenship entailing identical rights and duties for all regardless of religious persuasion. Opinion was also strongly in favour of promoting a culture of tolerance through the media, especially television, and through education at school and in the family.

80. Regarding the changes in blasphemy law proceedings (see under blasphemy law and related jurisprudence, paras. 14-16), the Ministry for Foreign Affairs assured the Special Rapporteur that the legal amendments would be introduced in 8 to 12 months' time.

IV. CONCLUSIONS AND RECOMMENDATIONS

81. With regard to legislation, the Special Rapporteur would like to point out that an official or State religion in itself is not opposed to human rights. The State should not, however, take control of religion by defining its content, concepts or limitations, apart from those which are strictly necessary, as provided in article 1, paragraph 3, of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and in article 18, of the International Covenant on Civil and Political Rights. On 20 July 1993, the Committee on Human Rights adopted

General Comment No. 22 concerning article 18 of the Covenant, in which it expressed the opinion that the right to freedom of thought, conscience and religion was far-reaching. The Committee also pointed out that limitations on the freedom to manifest a religion or belief are authorized only if prescribed and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others, and are applied in such a manner that would vitiate the right to freedom of thought, conscience and religion.

82. In the light of the above considerations, the Special Rapporteur has concluded, after careful thought and having studied the matter and consulted other views, that the present State laws related to religious minorities, and more generally speaking the subject of tolerance and non-discrimination based on religion or belief, are likely to favour or foster intolerance in society. The law applied specifically to the Ahmadi minority is particularly questionable and in some respects frankly unwarranted. More generally speaking, blasphemy as an offence against belief may be subject to special legislation. However, such legislation should not be discriminatory and should not give rise to abuse. Nor should it be so vague as to jeopardize human rights, especially those of minorities. If offences against belief are made punishable under ordinary law, then procedural guarantees must be introduced and a balanced attitude must be maintained. While protecting freedom of conscience and freedom of worship is clearly a necessity, applying the death penalty for blasphemy appears disproportionate and even unacceptable, especially in view of the fact that blasphemy is very often the reflection of a very low standard of education and culture, for which the blasphemer is never solely to blame. The Special Rapporteur endorses the Government's proposal to amend procedural aspects of the blasphemy law and would encourage it not only to give effect to this proposal, but also to go further in amending the law on blasphemy and more generally on religious offences in accordance with the views expressed above. The Special Rapporteur believes that in any event some practical measures, especially administrative and educational, should be implemented pending more substantial constitutional and legislative changes.

83. The Special Rapporteur also recommends that the authorities should check that Hudood ordinances are compatible with human rights and urges that Hudood penalties, because they are exclusively Muslim, should not be applied to non-Muslims. He also recommends establishing legislation on non-discriminatory evidence and advocates a single electoral system, involving all citizens without distinction, especially based on religion.

84. With regard to proselytism, conversion and apostasy, the Special Rapporteur wishes to draw attention to the need to abide by international standards laid down in the field of human rights, including the freedom to change religion and the freedom to manifest one's religion or belief, either individually or in community with others, in public or in private, subject only to limitations prescribed by law.

85. The Special Rapporteur also considers that no mention of religion should be included on passports, on identity card application forms or on any other administrative documents. Deletion of the statement required of Muslims regarding non-recognition of Ahmadis as Muslims in passport application forms is strongly recommended.

86. With regard to application of and respect for the law, the Special Rapporteur insists that all cases of abuse or rape against girls and women, especially those belonging to minorities, should be duly punished. In this respect the duty of police authorities to carry out lawful arrests and searches should be recalled and applied in practice. Similarly, police officers should be held personally responsible, under both civil and criminal law, for any arbitrary arrest or detention. An indisputable record must be kept of the day and time of any arrest/detention and the reason for it, while all legal proceedings and guarantees must be complied with.

87. Victims should also be duly informed of the proceedings and guarantees provided by law.

88. With regard to all the above considerations, the Special Rapporteur is aware that existing legislation and the way it is applied have been inherited from the past, particularly from periods of dictatorship. Nevertheless, the Government's political will to foster tolerance must be asserted with greater determination and followed up, as and when required, with practical improvements, in line with the above recommendations.

89. With regard to society, the Special Rapporteur remains concerned at manifestations of intolerance and more generally speaking at the clearly limited expression of the culture of tolerance. He believes that a special effort should be made in order to encourage and develop the culture of tolerance and of human rights. A limited rate of literacy, rigid social structures, authoritarian education, political militancy, media frenzy and politically inclined religious practices are not conducive to reducing tensions, particularly between individuals or groups, nor to developing a culture of tolerance. The Special Rapporteur considers that there is an urgent need to inculcate a spirit of tolerance and freedom in order to ensure that rights and liberties are enjoyed by all. The role of the State in this respect is fundamental and inescapable. There can be no real and lasting progress as regards tolerance while the greater part of the population remains illiterate and so long as the school system, the family, the media and religious practices (regardless of persuasion) are not called upon to make a fundamental effort to bring about a change of attitude and to ensure that the culture of tolerance is developed and strengthened. The State could also play a more active role in making public opinion more aware of the culture of tolerance. With the encouragement of the State, mass communication media should help more effectively to combat all forms of intolerance and discrimination based on religion or belief.

90. The Special Rapporteur also considers that it would be appropriate to implement the programme of advisory services of the Centre for Human Rights and recalls the recommendations contained in his report E/CN.4/1995/91. Suitable training of police and administrative staff in human rights, especially in the field of religious freedom, would be very welcome.

91. With regard to religious extremism, in accordance with Commission on Human Rights resolution 1995/23, the Special Rapporteur encourages the Government to restrain it and to take appropriate measures in conformity with the law.

92. The Special Rapporteur considers furthermore that a special effort should be made with regard to legislation applying to places of worship, education and political parties.

93. Places of worship should be reserved for religious and not political matters. As places of prayer and meditation, they should be protected from tensions and political strife. This will not come about so long as the State does not, by adopting and applying appropriate legislation, guarantee the neutrality of places of worship and shelter them from political excesses and ideological and partisan struggles.

94. Official educational policy should be set out in appropriate framework legislation aimed at combating illiteracy more effectively and advocating values based on human rights and tolerance, with the purpose of achieving a balanced development of the personality, avoiding the extremes of domination and submission on the one hand and rebellious tendencies on the other.

95. The legislation concerning political parties should ensure that long-standing religious values are not interfered with by short-term political interests. Political parties which express political feelings based on religion, while engaging in peaceful political activities, do not a priori give rise to concern. Parties claiming to be the front-line fighters, spokesmen or standard-bearers of religions, however, are often little inclined to defend tolerance and human rights. For this reason, an increasing number of States are outlawing political parties based exclusively or mainly on religion.

96. It has to be borne in mind, moreover, that any financial dependence of political and religious movements on foreign sources can have weighty implications in many respects.

97. The Special Rapporteur requests that the authorities in all circumstances ensure the serene operation of justice by protecting the courts from the pressures of demonstrations and crowds.

98. Lastly, the Special Rapporteur is of the opinion that a general policy based on tolerance should be asserted in a clearer and more determined manner, and applied gradually over time, without precipitation.

Notes

1/ "L'état du monde", 1995 edition.

2/ The Ahmadis, who are members of a religious group founded in the nineteenth century by Mirza Ghulam Ahmad, consider themselves Muslim, but have been looked upon as heretics in Pakistan owing to their attitude regarding the finality of the Holy Prophet Mohammed.

3/ This Act declared that "the Injunctions of Islam shall be the supreme law of Pakistan" and provided for the Islamization of education and the economy, while specifying that none of the provisions of the Act would "affect the personal laws, religious freedoms, traditions, customs and way of life of non-Muslims".

Annex

List of cases*

Anwar Masih

In February 1995, Anwar Masih is reported to have been arrested and imprisoned under section 225 C of the Penal Code in Sammundri jail in Faisalabad. Anwar Masih is said to have been born into a Christian family, to have converted twice to Islam and then reconverted to Christianity. He is alleged to have been initially detained in Sammundri jail and then transferred to Faisalabad district jail. Anwar Masih is said to refute the charges and his case to be still pending.

Habib Masih

Habib Masih, a Christian medal salesman, reportedly was arrested and has been detained since November 1994 by local police in Shahkot, Sheikhupura District, near Lahore, without bail, for allegedly insulting the Koran.

Daulat Khan, Rashid Ahmad, Riaz Khan, Bashir Ahmad

Daulat Khan, who allegedly converted to Ahmadiat, is reported to have been arrested on 5 April 1995 under sections 107 (abetment) and 151 (disturbing the peace by joining in unlawful assembly) of the Penal Code. Two separate cases are said to have been registered against Daulat Khan under sections 295 A and 298 C of the Penal Code. He is thought to be behind bars in Central Jail, Peshawar. In addition, on 9 April 1995, Rashid Ahmad and his son-in-law, Riaz Khan, are reported to have been attacked as they were about to attend a court hearing in Shab Qadar in order to file a bail application on Daulat Khan's behalf. Riaz Khan is said to have been stoned to death and Rashid Ahmad to have been taken to hospital in Peshawar with serious injuries. A third Ahmadi advocate, Bashir Ahmad, is reported to have escaped unhurt.

Asma Jehangir, Tariq C. Qaisar, Father Julius, J. Salik

It was reported that, on July 1995, the "Tehrik Tahaffuz-i-Namoos-i-Risalat" called for the assassination of three persons accused of blasphemy.

Allegedly, 2,432 Ahmadis have been charged in 654 blasphemy cases. Over 500 of those cases, registered under section 295 C, are reportedly still pending.

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* List of cases concerning members of the Christian and the Ahmadi minorities sent to the authorities.